

UNITED STATES OF AMERICA
DEPARTMENT OF COMMERCE

In the Matter of
GROVE EUROPE LIMITED

Case No. 91-42

ORDER

The Office of Antiboycott Compliance, Bureau of Export Administration, U.S. Department of Commerce ("Department"), having determined to initiate administrative proceedings pursuant to Section 11(c) of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 1997)) (the "Act")¹ and the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (1997)), against Grove Europe Limited ("Grove Europe"), a company resident in England and a controlled-in-fact foreign affiliate of a domestic concern, based on the allegations set forth in the Proposed Charging Letter, dated November 4, 1997, attached hereto and incorporated herein by this reference; and

¹ The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)), August 14, 1996 (3 C.F.R., 1996 Comp. 298 (1997)) and August 13, 1997 (62 Fed. Reg. 43629, August 15, 1997), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 1997)).

The Department and Grove Europe having entered into a Settlement Agreement, incorporated herein by this reference, whereby the parties have agreed to settle this matter; and

The Assistant Secretary for Export Enforcement having approved the terms of the Settlement Agreement:

IT IS THEREFORE ORDERED THAT,

FIRST, a civil penalty in the amount of \$298,000 is assessed against Grove Europe;


SECOND, Grove Europe shall pay to the Department, in complete settlement of this matter, the sum of \$298,000 within thirty (30) days of the service of this Order as specified in the attached instructions;

THIRD, pursuant to the Debt Collection Act of 1982, as amended (U.S.C.A. §§ 3701-3720E (1983 and Supp. 1997)), the civil penalty owed under this Order accrues interest as more fully described in the attached Notice, and, if payment is not made by the due date specified herein, Grove Europe will be assessed, in addition to interest, a penalty charge and an administrative charge, as more fully described in the attached Notice.

FOURTH, as authorized by Section 11(d) of the Act, the timely payment of the sum of \$298,000 is hereby made a condition to the granting, restoration or continuing validity of any export license, permission, or privilege granted, or to be granted, to Grove Europe. Accordingly, if Grove Europe should fail to make payment in a timely manner, the undersigned will enter an Order under the authority of Section 11(d) of the Act denying all of Grove Europe's export privileges for a period of one year from the date of entry of this Order; and

FIFTH, the Proposed Charging Letter, the Settlement Agreement and this Order shall be made available to the public, and a copy of this Order shall be served upon Grove Europe.

This Order is effective immediately.



F. Amanda DeBusk
Assistant Secretary for Export Enforcement
Bureau of Export Administration

Entered this 22nd day of December, 1997.

INSTRUCTIONS FOR PAYMENT OF SETTLEMENT AMOUNT

1. The check should be made payable to:

U.S. DEPARTMENT OF COMMERCE

2. The check should be mailed to:

U.S. DEPARTMENT OF COMMERCE
BUREAU OF EXPORT ADMINISTRATION
ROOM 6622
14th STREET & CONSTITUTION AVENUE, N.W.
WASHINGTON, D.C. 20230

ATTENTION: MIRIAM COHEN

NOTICE

The Order to which this Notice is attached describes the reasons for the assessment of the civil monetary penalty and the rights, if any, that respondent may have to seek review, both within the U.S. Department of Commerce and the courts. It also specifies the amount owed and the date by which payment of the civil penalty is due and payable.

Under the Debt Collection Act of 1982, as amended (31 U.S.C.A. §§ 3701-3720E (1983 and Supp. 1997)), and the Federal Claims Collection Standards (4 C.F.R. Parts 101-105 (1997)), interest accrues on any and all civil monetary penalties owed and unpaid under the Order, from the date of the Order until paid in full. The rate of interest assessed respondent is the rate of the current value of funds to the U.S. Treasury on the date that the Order was entered. However, interest is waived on any portion paid within 30 days of the date of the Order. See 31 U.S.C.A. § 3717 and 4 C.F.R. § 102.13.

The civil monetary penalty will be delinquent if not paid by the due date specified in the Order. If the penalty becomes delinquent, interest will continue to accrue on the balance remaining due and unpaid, and respondent will also be assessed both an administrative charge to cover the cost of processing and handling the delinquent claim and a penalty charge of six percent per year. However, although the penalty charge will be computed from the date that the civil penalty becomes delinquent, it will be assessed only on sums due and unpaid for over 90 days after that date. See 31 U.S.C.A. § 3717 and 4 C.F.R. § 102.13.

The foregoing constitutes the initial written notice and demand to respondent in accordance with section 102.2(b) of the Federal Claims Collection Standards (4 C.F.R. § 102.2(b)).

UNITED STATES OF AMERICA
DEPARTMENT OF COMMERCE

_____)	
In the Matter of)	
)	
GROVE EUROPE LIMITED)	
_____)	Case No. <u>91-42</u>

SETTLEMENT AGREEMENT

This Settlement Agreement is made by and between Grove Europe Limited ("Grove Europe"), a controlled-in-fact foreign affiliate of a domestic concern, and the United States Department of Commerce ("Department"), pursuant to Section 766.18(a) of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (1997)), issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 & Supp. 1997)) (the "Act").¹

WHEREAS, the Office of Antiboycott Compliance, Bureau of Export Administration, U.S. Department of Commerce, has notified Grove Europe of its intention to initiate an administrative proceeding against Grove Europe pursuant to Section 11(c) of the Act by issuing the Proposed Charging Letter, dated November 4,

¹ The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)), August 14, 1996 (3 C.F.R., 1996 Comp. 298 (1997)) and August 13, 1997 (62 Fed. Reg. 43629, August 15, 1997), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 1997)).

1997, a copy of which is attached hereto and incorporated herein by this reference; and

WHEREAS, Grove Europe has reviewed the Proposed Charging Letter and is aware of the allegations against it and the administrative sanctions which could be imposed against it if the allegations are found to be true; it fully understands the terms of this Settlement Agreement, and enters into this Settlement Agreement voluntarily and with full knowledge of its rights; and it states that no promises or representations have been made to it other than the agreements and considerations herein expressed; and

WHEREAS, Grove Europe neither admits nor denies the truth of the allegations, but wishes to settle and dispose of the allegations made in the Proposed Charging Letter by entering into this Settlement Agreement; and

WHEREAS, Grove Europe agrees to be bound by the appropriate Order ("Order"), when entered;

NOW, THEREFORE, Grove Europe and the Department agree as follows:

1. Under the Act and the Regulations, the Department has jurisdiction over Grove Europe with respect to the matters alleged in the Proposed Charging Letter.
2. In complete settlement of all matters set forth in the Proposed Charging Letter, Grove Europe will pay to the Department the amount of \$298,000 within 30 days of service upon it of the Order.
3. As authorized by Section 11(d) of the Act, timely payment of the amount agreed to in paragraph 2, above, is hereby made a condition to the granting, restoration or continuing validity of any export license, permission, or privilege granted, or to be granted, to Grove Europe. Failure to make timely payment as described in paragraph 2 shall result in the denial of all of Grove Europe's export privileges for a period of one year from the date of entry of the Order imposing the civil penalty.
4. Subject to the approval of this Settlement Agreement, pursuant to paragraph 9 hereof, Grove Europe hereby

waives all rights to further procedural steps in this matter (except with respect to any alleged violation of this Settlement Agreement or the Order, when entered) including, without limitation, any right to:

- a. An administrative hearing regarding the allegations in the Proposed Charging Letter;
 - b. Request a refund of the funds paid by Grove Europe pursuant to this Settlement Agreement and the Order, when entered;
or
 - c. Seek judicial review or otherwise contest the validity of this Settlement Agreement or the Order, when entered.
5. The Department, prior to and upon entry of the Order, will not subsequently initiate any further administrative or judicial proceeding, or make a referral to the Department of Justice for criminal proceedings against Grove Europe, with respect to any alleged violation of Section 8 of the Act or Part 769 or redesignated Part 760 of the

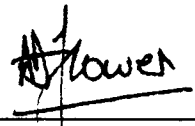
Regulations arising out of the matters set forth in the Proposed Charging Letter or any other matter that was disclosed to or reviewed by the Department prior to the execution of this Settlement Agreement.

6. Grove Europe understands that the Department will disclose publicly the Proposed Charging Letter, this Settlement Agreement, and the Order, when entered.
7. This Settlement Agreement is for settlement purposes only, and does not constitute a finding or determination by the Department or an admission by Grove Europe that it has violated the Regulations or an admission of the truth of any allegation contained in the Proposed Charging Letter or in this Settlement Agreement. Therefore, if this Settlement Agreement is not accepted and the Order not entered by the Assistant Secretary for Export Enforcement, the Department may not use this Settlement Agreement against Grove Europe in any administrative or judicial proceeding.
8. No agreement, understanding, representation or interpretation not contained in this Settlement Agreement may be used to vary or otherwise affect the terms of this Settlement Agreement or the Order, when

entered, nor shall this Settlement Agreement bind, constrain or otherwise limit any action by any other agency or department of the United States Government with respect to the facts and circumstances herein addressed.

9. This Settlement Agreement will become binding on the Department only when approved by the Assistant Secretary for Export Enforcement by entering the Order.

GROVE EUROPE LIMITED

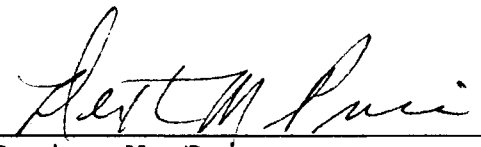


Anthony Flower
Company Secretary

th
15 DECEMBER 1997

Date

U.S. DEPARTMENT OF COMMERCE



Dexter M. Price
Acting Director
Office of Antiboycott Compliance

19 December 1997

Date



PROPOSED CHARGING LETTER

November 4, 1997

Grove Europe Limited
Crownworks, Sunderland
England SR5 6TT

Re: Grove Europe Limited
OAC Case No. 91-42

Gentlemen:

We have reason to believe and charge that you, Grove Europe Limited, have committed one hundred twenty (120) violations of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (1997)) (the "Regulations"),¹ issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. §§ 2401-2420 (1991 and Supp. 1997)) (the "Act").²

We charge that with intent to comply with, further, or support an unsanctioned foreign boycott, on fifteen (15) occasions you knowingly agreed to refuse to do business with or in a boycotted country, with any business concern organized under the laws of a boycotted country, with any national or resident of a boycotted

¹ The alleged violations occurred during 1989. The Regulations governing the violations at issue are found in the 1989 version of the Code of Federal Regulations (15 C.F.R. Parts 768-799 (1989)). Those Regulations define the violations that the Bureau of Export Administration alleges occurred and are referred to hereinafter as the former Regulations. Since that time, the Regulations have been reorganized and restructured; the restructured Regulations establish the procedures that apply to the matters in this letter.

² The Act expired on August 20, 1994. Executive Order 12924 (3 C.F.R., 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 C.F.R., 1995 Comp. 501 (1996)), August 14, 1996 (3 C.F.R., 1996 Comp. 298 (1997)) and August 13, 1997 (62 Fed. Reg. 43629, August 15, 1997), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701-1706 (1991 & Supp. 1997)).



country, or with any other persons known or believed to be restricted from having a business relationship with or in a boycotting country, pursuant to an agreement with or a requirement of a boycotting country, activities prohibited by Section 769.2(a) of the former Regulations, and not excepted.

We also charge that, with intent to comply with, further, or support an unsanctioned foreign boycott, on one hundred five (105) occasions you furnished information concerning your or other persons' past, present or proposed business relationships with or in a boycotted country, with business concerns organized under the laws of a boycotted country, with nationals or residents of a boycotted country, or with any other person who is known or believed to be restricted from having any business relationship with or in a boycotting country, in violation of Section 769.2(d) of the former Regulations.

We allege that:

1. You are a controlled in fact foreign affiliate of a domestic concern. As a controlled in fact foreign affiliate, as defined in section 760.1(c) of the Regulations, you are a United States person as defined in Section 760.1(b) of the Regulations.
2. During the period January 1989 through April 1989, you were incorporated in the United Kingdom under the name of Grove Coles Limited, but you were owned by a domestic concern. Accordingly, during that time period, you were a controlled in fact foreign subsidiary of a domestic concern, as defined in Section 769.1(c) of the former Regulations, and, as such, you were a United States person as defined by Section 769.1(b) of the former Regulations.
3. During 1989, you engaged in activities involving the sale or transfer of goods or services, including information, between the United States and England, for reexport to Libya, Saudi Arabia, and the United Arab Emirates. Such activities were in the interstate or foreign commerce of the United States, as defined in Section 769.1(d) of the former Regulations.
4. In connection with the activities referred to in paragraph 3 above, on fifteen (15) occasions

regarding sales to Libya, you sent invoices that contained the following statement:

"WE FURTHER DECLARE ... THAT WE WILL ACT IN COMPLIANCE WITH THE PRINCIPLES AND REGULATIONS OF THE ARAB BOYCOTT OF ISRAEL."

Table A, which is attached and incorporated by this reference, identifies your sales reference numbers and invoice dates for each of the fifteen shipments destined to Libya.

5. By including the statement quoted in paragraph 4 above on invoices to Libya, on fifteen (15) occasions you knowingly agreed to refuse to do business with or in a boycotted country, with any business concern organized under the laws of a boycotted country, with any national or resident of a boycotted country, or with any other persons known or believed to be restricted from having a business relationship with or in a boycotting country, pursuant to an agreement with or a requirement of a boycotting country, activities prohibited by Section 769.2(a) of the former Regulations, and not excepted. We therefore charge you with fifteen (15) violations of Section 769.2(a) of the former Regulations.
6. In connection with the activities referred to in paragraph 3 above, on nineteen (19) occasions involving your sales of goods to be delivered to Libya, Saudi Arabia, and the United Arab Emirates, you provided invoices containing items of information as described in Table B, which is attached and incorporated by this reference.
7. By providing the items of information referred to in paragraph 6 above, and as further described in Table B, you furnished one hundred five (105) items of information about your or other persons' past, present, or proposed business relationships: with or in a boycotted country, with any business concern organized under the laws of a boycotted country, with any national or resident of a boycotted country, or with any other person who is known or believed to be restricted from having any business relationship with or in a boycotting country, activities prohibited by Section 769.2(d) of the former Regulations, and not excepted. We therefore charge you with one hundred five (105) violations of Section 769.2(d) of the former Regulations.

Accordingly, administrative proceedings are instituted against you pursuant to Part 766 of the Regulations for the purpose of obtaining an order imposing administrative sanctions.³

If you fail to answer the allegations contained in this letter within thirty (30) days after service as provided in Section 766.6, such failure will be treated as a default under Section 766.7.

You are entitled to a hearing on the record as provided in Section 766.6 of the Regulations. If you wish to have a hearing on the record, you must file a written demand for it with your answer. You are entitled to be represented by counsel and, under Section 766.18 of the Regulations, to seek a settlement agreement.

As provided in Section 766.3 of the Regulations, I am referring this matter to the Administrative Law Judge. Pursuant to an Interagency Agreement between the Bureau of Export Administration and the U.S. Coast Guard, the U.S. Coast Guard is providing administrative law judge services, to the extent that such services are required under the Regulations. Therefore, in accordance with the instructions in Section 766.5(a) of the Regulations, your answer should be filed with:

U.S. Coast Guard ALJ Docketing Center
40 South Gay Street
Baltimore, Maryland 21202-4022

Attention: Administrative Law Judge

Also, in accordance with the instructions in Section 766.5(b) of the Regulations, a copy of your answer should also be served on the Bureau of Export Administration at the following address:

³ Administrative sanctions may include any or all of the following:

- a. The maximum civil penalty of \$10,000 per violation (see Section 764.3(a)(1) of the Regulations);
- b. Denial of export privileges (see Section 764.3(a)(2) of the Regulations); and/or
- c. Exclusion from practice (see Section 764.3(a)(3) of the Regulations).

Office of the Chief Counsel for Export Administration
U.S. Department of Commerce
Room H-3839
14th Street & Constitution Avenue, N.W.
Washington, D.C. 20230

Attention: Pamela P. Breed, Esq.

Mrs. Breed may be contacted by telephone at (202) 482-5311.

Sincerely,

Dexter M. Price
Acting Director
Office of Antiboycott Compliance

TABLE A

SCHEDULE OF ALLEGED VIOLATIONS:
 AGREEMENTS TO REFUSE TO DO BUSINESS IN VIOLATION OF SECTION 769.2(a)

Grove Europe Limited, Case No. 91-42

<u>Sales Number</u>	<u>Boycotting Country/ Destination</u>	<u>Date of Agreement</u> (on or about)	<u>Boycott Clause</u> (see Key*)
333625	Libya	1/9/89	A
333680	Libya	1/10/89	A
335369	Libya	1/30/89	A
335429	Libya	2/1/89	A
335714	Libya	2/2/89	A
336298	Libya	2/7/89	A
336920	Libya	2/15/89	A
337080	Libya	2/16/89	A
337445	Libya	2/20/89	A
338700	Libya	3/8/89	A
340103	Libya	4/5/89	A
341417	Libya	4/12/89	A
341757	Libya	4/13/89	A
333910	Libya	4/18/89	A
341418	Libya	4/18/89	A

* Key to Boycott Clause:

A = "WE FURTHER DECLARE ... THAT WE WILL ACT IN COMPLIANCE WITH THE PRINCIPLES AND REGULATIONS OF THE ARAB BOYCOTT OF ISRAEL."

TABLE B

SCHEDULE OF ALLEGED VIOLATIONS:
FURNISHING OF INFORMATION IN VIOLATION OF SECTION 769.2(d)

Grove Europe Limited, Case No. 91-42

<u>Sales Number</u>	<u>Boycotting Country/ Destination</u>	<u>Date of Furnishing (on or about)</u>	<u>Boycott Clauses (see Key*)</u>	INFORMATION FURNISHED:	
				<u>Number of Other Companies Named</u>	<u>Total Items of Information</u>
332917	U.A.E.	1/5/89	D	0	1
333625	Libya	1/9/89	A, B, C	0	4
333680	Libya	1/10/89	A, B, C	4	8
335369	Libya	1/30/89	A, B, C	5	9
335429	Libya	2/1/89	A, B, C	6	10
335714	Libya	2/2/89	A, B, C	2	6
333749	Saudi Arabia	2/2/89	D	0	1
336298	Libya	2/7/89	A, B, C	3	7
336326	U.A.E.	2/13/89	D	0	1
336920	Libya	2/15/89	A, B, C	5	9
337080	Libya	2/16/89	A, B, C	1	5
337445	Libya	2/20/89	A, B, C	2	6
338095	U.A.E.	3/3/89	D	0	1
338700	Libya	3/8/89	A, B, C	3	7
340103	Libya	4/5/89	A, B, C	2	6
341417	Libya	4/12/89	A, B, C	1	5
341757	Libya	4/13/89	A, B, C	3	7
333910	Libya	4/18/89	A, B, C	3	7
341418	Libya	4/18/89	A, B, C	1	5

Total Items of Information Furnished: 105

* Key to Boycott Clauses at page 2.

TABLE B**SCHEDULE OF ALLEGED VIOLATIONS:
FURNISHING OF INFORMATION IN VIOLATION OF SECTION 769.2(d)**

Grove Europe Limited, Case No. 91-42
(continued)

*** Key to Boycott Clauses:**

A = "WE CERTIFY THAT THE GOODS BEING EXPORTED ... DO NOT CONTAIN ANY COMPONENT OF AN ISRAELI ORIGIN WHATEVER THE PROPORTION OF SUCH COMPONENTS IS."

B = "WE DECLARE THAT GROVE COLES LTD IS THE EXPORTER OF THE GOODS WHICH ARE MANUFACTURED AND PRODUCED BY THE COMPANIES LISTED HEREIN AND IS NOT AN AFFILIATE TO A MOTHER OF ANY COMPANY THAT APPEARS ON THE ISRAELI BOYCOTT BLACKLIST."

C = "WE FURTHER DECLARE THAT NEITHER GROVE COLES LTD NOR THE MANUFACTURERS LISTED HEREIN HAS NO DIRECT OR INDIRECT CONNECTIONS WHATSOEVER WITH ISRAEL AND THAT WE WILL ACT IN COMPLIANCE WITH THE PRINCIPLES AND REGULATIONS OF THE ARAB BOYCOTT OF ISRAEL."

D = "WE HEREBY CERTIFY THAT THE GOODS ENUMERATED IN THIS INVOICE ARE NOT OF ISRAELI ORIGIN NOR DO THEY CONTAIN ISRAELI MATERIALS."